

By Representative Constantine

1                                   A bill to be entitled  
2           An act relating to brownfield economic  
3           redevelopment; amending s. 288.047, F.S.;  
4           requiring Enterprise Florida, Inc., to set  
5           aside each fiscal year a certain amount of the  
6           appropriation for the Quick Response Training  
7           Program for businesses located in a brownfield  
8           area; amending s. 288.107, F.S.; redefining the  
9           term "eligible business"; providing for bonus  
10          refunds for businesses that can demonstrate a  
11          fixed capital investment in certain mixed use  
12          activities in the brownfield area; amending s.  
13          288.905, F.S.; requiring Enterprise Florida,  
14          Inc., to develop comprehensive marketing  
15          strategies for redevelopment of brownfield  
16          areas; amending s. 376.301, F.S.; redefining  
17          the terms "antagonistic effects," "discharge,"  
18          "institutional controls," "natural  
19          attenuation," and "site rehabilitation" and  
20          defining the term "risk reduction"; creating s.  
21          376.30701, F.S.; extending application of  
22          risk-based corrective action principles to all  
23          contaminated sites resulting from a discharge  
24          of pollutants or hazardous substances;  
25          providing for contamination cleanup criteria  
26          that incorporates risk-based corrective actions  
27          to be adopted by rule; providing clarification  
28          that cleanup criteria do not apply to offsite  
29          relocation or treatment; providing the  
30          conditions under which further rehabilitation  
31          may be required; creating s. 376.30702, F.S.;

1           creating the Florida State-Owned-Lands Cleanup  
2           Program; providing intent; directing the  
3           Department of Environmental Protection to use  
4           existing site priority ranking and cleanup  
5           criteria; establishing limited liability  
6           protection; amending s. 376.3078, F.S.;  
7           providing conditions with respect to  
8           determination of eligibility of specified  
9           drycleaning facilities for state-funded site  
10          rehabilitation; providing for rehabilitation  
11          criteria; amending s. 376.79, F.S.; defining  
12          the terms "contaminant" and "risk reduction";  
13          redefining the terms "natural attenuation,"  
14          "institutional control," and "source removal";  
15          amending s. 376.80, F.S.; allowing local  
16          governments or persons responsible for  
17          brownfield area rehabilitation and  
18          redevelopment to use an existing advisory  
19          committee; deleting the requirement that the  
20          advisory committee must review and provide  
21          recommendations to the local government with  
22          jurisdiction on the proposed brownfield site  
23          rehabilitation agreement; providing that the  
24          person responsible for site rehabilitation must  
25          notify the advisory committee of the intent to  
26          rehabilitate and redevelop the site before  
27          executing the brownfield site rehabilitation  
28          agreement; requiring the person responsible for  
29          site rehabilitation to hold a meeting or attend  
30          a regularly scheduled meeting of the advisory  
31          committee to inform the advisory committee of

1 the outcome of the environmental assessment;  
2 requiring the person responsible for site  
3 rehabilitation to enter into a brownfield site  
4 rehabilitation agreement only if actual  
5 contamination exists; clarifying provisions  
6 relating to the required comprehensive general  
7 liability and comprehensive automobile  
8 liability insurance; amending s. 376.81, F.S.;  
9 providing direction regarding the risk-based  
10 corrective action rule; requiring the  
11 department to establish alternative cleanup  
12 levels under certain circumstances; amending s.  
13 376.82, F.S.; providing immunity for liability  
14 regarding contaminated site remediation under  
15 certain circumstances; creating s. 376.876,  
16 F.S.; providing for a Brownfield Redevelopment  
17 Grants Program in the Department of  
18 Environmental Protection; specifying the uses  
19 of grant funds; requiring matching funds;  
20 authorizing the department to adopt rules;  
21 creating s. 376.88, F.S.; providing for the  
22 Brownfield Program Review Advisory Council;  
23 providing duties and responsibilities; amending  
24 s. 403.973, F.S.; providing that projects  
25 located in a designated brownfield area are  
26 eligible for the expedited permitting process;  
27 amending s. 190.012, F.S.; authorizing  
28 community development districts to fund certain  
29 environmental costs under certain  
30 circumstances; amending ss. 712.01, 712.03,  
31 F.S.; prohibiting subsequent property owners

1 from removing certain deed restrictions under  
2 other provisions of the Marketable Record Title  
3 Act; providing appropriations; providing an  
4 effective date.

5  
6 Be It Enacted by the Legislature of the State of Florida:

7  
8 Section 1. Subsection (5) of section 288.047, Florida  
9 Statutes, is amended to read:

10 288.047 Quick-response training for economic  
11 development.--

12 (5) For the first 6 months of each fiscal year,  
13 Enterprise Florida, Inc., shall set aside 30 percent of the  
14 amount appropriated for the Quick-Response Training Program by  
15 the Legislature to fund instructional programs for businesses  
16 located in an enterprise zone or brownfield area ~~to instruct~~  
17 ~~residents of an enterprise zone~~. Any unencumbered funds  
18 remaining undisbursed from this set-aside at the end of the  
19 6-month period may be used to provide funding for any program  
20 qualifying for funding pursuant to this section.

21 Section 2. Section 288.107, Florida Statutes, is  
22 amended to read:

23 288.107 Brownfield redevelopment bonus refunds.--

24 (1) DEFINITIONS.--As used in this section:

25 (a) "Account" means the Economic Development  
26 Incentives Account as authorized in s. 288.095.

27 (b) "Brownfield sites" means sites that are generally  
28 abandoned, idled, or underused industrial and commercial  
29 properties where expansion or redevelopment is complicated by  
30 actual or perceived environmental contamination.

31

1           (c) "Brownfield area" means a contiguous area of one  
2 or more brownfield sites, some of which may not be  
3 contaminated, and which has been designated by a local  
4 government by resolution. Such areas may include all or  
5 portions of community redevelopment areas, enterprise zones,  
6 empowerment zones, other such designated economically deprived  
7 communities and areas, and  
8 Environmental-Protection-Agency-designated brownfield pilot  
9 projects.

10           (d) "Director" means the director of the Office of  
11 Tourism, Trade, and Economic Development.

12           (e) "Eligible business" means a qualified target  
13 industry business as defined in s. 288.106(2)(o) or other  
14 business that can demonstrate a fixed capital investment of at  
15 least \$2 million in mixed-use business activities, including  
16 multiunit housing, commercial, retail, and industrial in  
17 brownfield areas and which pays wages that are at least 80  
18 percent of the average of all private sector wages in the  
19 county in which the business is located.

20           (f) "Jobs" means full-time equivalent positions,  
21 consistent with the use of such terms by the Department of  
22 Labor and Employment Security for the purpose of unemployment  
23 compensation tax, resulting directly from a project in this  
24 state. This number does not include temporary construction  
25 jobs involved with the construction of facilities for the  
26 project and which are not associated with the implementation  
27 of the site rehabilitation as provided in s. 376.80.

28           (g) "Office" means the Office of Tourism, Trade, and  
29 Economic Development.

30  
31

1           (h) "Project" means the creation of a new business or  
2 the expansion of an existing business as defined in s.  
3 288.106.

4           (2) BROWNFIELD REDEVELOPMENT BONUS REFUND.--There  
5 shall be allowed from the account a bonus refund of \$2,500 to  
6 any qualified target industry business or other eligible  
7 business as defined in paragraph (1)(e)for each new Florida  
8 job created in a brownfield which is claimed on the qualified  
9 target industry business's annual refund claim authorized in  
10 s. 288.106(6) or other similar annual claim procedure for  
11 other eligible business as defined in paragraph (1)(e)and  
12 approved by the office as specified in the final order issued  
13 by the director.

14           (3) CRITERIA.--The minimum criteria for participation  
15 in the brownfield redevelopment bonus refund are:

16           (a) The creation of at least 10 new full-time  
17 permanent jobs. Such jobs shall not include construction or  
18 site rehabilitation jobs associated with the implementation of  
19 a brownfield site agreement as described in s. 376.80(5).

20           **(b)** The completion of a fixed capital investment of at  
21 least \$2 million in mixed-use business activities, including  
22 multiunit housing, commercial, retail, and industrial in  
23 brownfield areas and which pay wages that are at least 80  
24 percent of the average of all private sector wages in the  
25 county in which the business is located.

26           **(c)**~~(b)~~ That the designation as a brownfield will  
27 diversify and strengthen the economy of the area surrounding  
28 the site.

29           **(d)**~~(c)~~ That the designation as a brownfield will  
30 promote capital investment in the area beyond that  
31 contemplated for the rehabilitation of the site.

1           (4) PAYMENT OF BROWNFIELD REDEVELOPMENT BONUS  
2 REFUNDS.--  
3           (a) To be eligible to receive a bonus refund for new  
4 Florida jobs created in a brownfield, a business must have  
5 been certified as a qualified target industry business under  
6 s. 288.106 or eligible business as defined in paragraph (1)(e)  
7 and must have indicated on the qualified target industry tax  
8 refund application form submitted in accordance with s.  
9 288.106(4) or other similar agreement for other eligible  
10 business as defined in paragraph (1)(e) that the project for  
11 which the application is submitted is or will be located in a  
12 brownfield and that the business is applying for certification  
13 as a qualified brownfield business under this section, and  
14 must have signed a qualified target industry tax refund  
15 agreement with the office which indicates that the business  
16 has been certified as a qualified target industry business  
17 located in a brownfield and specifies the schedule of  
18 brownfield redevelopment bonus refunds that the business may  
19 be eligible to receive in each fiscal year.  
20           (b) To be considered to receive an eligible brownfield  
21 redevelopment bonus refund payment, the business meeting the  
22 requirements of paragraph (a) must submit a claim once each  
23 fiscal year on a claim form approved by the office which  
24 indicates the location of the brownfield, the address of the  
25 business facility's brownfield location, the name of the  
26 brownfield in which it is located, the number of jobs created,  
27 and the average wage of the jobs created by the business  
28 within the brownfield as defined in s. 288.106 or other  
29 eligible business as defined in paragraph (1)(e) and the  
30 administrative rules and policies for that section.  
31

1 (c) The bonus refunds shall be available on the same  
2 schedule as the qualified target industry tax refund payments  
3 scheduled in the qualified target industry tax refund  
4 agreement authorized in s. 288.106 or other similar agreement  
5 for other eligible businesses as defined in paragraph (1)(e).

6 (d) After entering into a tax refund agreement as  
7 provided in s. 288.106 or other similar agreement for other  
8 eligible businesses as defined in paragraph (1)(e), an  
9 eligible business may receive brownfield redevelopment bonus  
10 refunds from the account pursuant to s. 288.106(3)(c).

11 (e) An eligible business that fraudulently claims a  
12 refund under this section:

13 1. Is liable for repayment of the amount of the refund  
14 to the account, plus a mandatory penalty in the amount of 200  
15 percent of the tax refund, which shall be deposited into the  
16 General Revenue Fund.

17 2. Commits a felony of the third degree, punishable as  
18 provided in s. 775.082, s. 775.083, or s. 775.084.

19 (f) The office shall review all applications submitted  
20 under s. 288.106 or other similar application forms for other  
21 eligible businesses as defined in paragraph (1)(e)which  
22 indicate that the proposed project will be located in a  
23 brownfield and determine, with the assistance of the  
24 Department of Environmental Protection, that the project  
25 location is within a brownfield as provided in this act.

26 (g) The office shall approve all claims for a  
27 brownfield redevelopment bonus refund payment that are found  
28 to meet the requirements of paragraphs (b) and (d).

29 (h) The director, with such assistance as may be  
30 required from the office and the Department of Environmental  
31 Protection, shall specify by written final order the amount of



1 the brownfield redevelopment bonus refund that is authorized  
2 for the qualified target industry business for the fiscal year  
3 within 30 days after the date that the claim for the annual  
4 tax refund is received by the office.

5 (i) The total amount of the bonus refunds approved by  
6 the director under this section in any fiscal year must not  
7 exceed the total amount appropriated to the Economic  
8 Development Incentives Account for this purpose for the fiscal  
9 year. In the event that the Legislature does not appropriate  
10 an amount sufficient to satisfy projections by the office for  
11 brownfield redevelopment bonus refunds under this section in a  
12 fiscal year, the office shall, not later than July 15 of such  
13 year, determine the proportion of each brownfield  
14 redevelopment bonus refund claim which shall be paid by  
15 dividing the amount appropriated for tax refunds for the  
16 fiscal year by the projected total of brownfield redevelopment  
17 bonus refund claims for the fiscal year. The amount of each  
18 claim for a brownfield redevelopment bonus tax refund shall be  
19 multiplied by the resulting quotient. If, after the payment  
20 of all such refund claims, funds remain in the Economic  
21 Development Incentives Account for brownfield redevelopment  
22 tax refunds, the office shall recalculate the proportion for  
23 each refund claim and adjust the amount of each claim  
24 accordingly.

25 (j) Upon approval of the brownfield redevelopment  
26 bonus refund, payment shall be made for the amount specified  
27 in the final order. If the final order is appealed, payment  
28 may not be made for a refund to the qualified target industry  
29 business until the conclusion of all appeals of that order.

30 (5) ADMINISTRATION.--

31

1           (a) The office is authorized to verify information  
2 provided in any claim submitted for tax credits under this  
3 section with regard to employment and wage levels or the  
4 payment of the taxes to the appropriate agency or authority,  
5 including the Department of Revenue, the Department of Labor  
6 and Employment Security, or any local government or authority.

7           (b) To facilitate the process of monitoring and  
8 auditing applications made under this program, the office may  
9 provide a list of qualified target industry businesses to the  
10 Department of Revenue, to the Department of Labor and  
11 Employment Security, to the Department of Environmental  
12 Protection, or to any local government authority. The office  
13 may request the assistance of those entities with respect to  
14 monitoring the payment of the taxes listed in s. 288.106(3).

15           Section 3. Paragraph (b) of subsection (3) of section  
16 288.905, Florida Statutes, is amended to read:

17           288.905 Duties of the board of directors of Enterprise  
18 Florida, Inc.--

19           (3)

20           (b)1. The strategic plan required under this section  
21 shall include specific provisions for the stimulation of  
22 economic development and job creation in rural areas and  
23 midsize cities and counties of the state.

24           2. Enterprise Florida, Inc., shall involve local  
25 governments, local and regional economic development  
26 organizations, and other local, state, and federal economic,  
27 international, and workforce development entities, both public  
28 and private, in developing and carrying out policies,  
29 strategies, and programs, seeking to partner and collaborate  
30 to produce enhanced public benefit at a lesser cost.

31

1           3. Enterprise Florida, Inc., shall involve rural,  
2 urban, small-business, and minority-business development  
3 agencies and organizations, both public and private, in  
4 developing and carrying out policies, strategies, and  
5 programs.

6           4. Enterprise Florida, Inc., shall develop a  
7 comprehensive marketing plan for redevelopment of brownfield  
8 areas designated pursuant to s. 376.80. The plan must include,  
9 but is not limited to, strategies to distribute information  
10 about current designated brownfield areas and the available  
11 economic incentives for redevelopment of brownfield areas.  
12 Such strategies are to be used in the promotion of business  
13 formation, expansion, recruitment, retention, and workforce  
14 development programs.

15           Section 4. Section 376.301, Florida Statutes, is  
16 amended to read:

17           376.301 Definitions of terms used in ss.  
18 376.30-376.319, 376.70, and 376.75.--When used in ss.  
19 376.30-376.319, 376.70, and 376.75, unless the context clearly  
20 requires otherwise, the term:

21           (1) "Aboveground hazardous substance tank" means any  
22 stationary aboveground storage tank and onsite integral piping  
23 that contains hazardous substances which are liquid at  
24 standard temperature and pressure and has an individual  
25 storage capacity greater than 110 gallons.

26           (2) "Additive effects" means a scientific principle  
27 that the toxicity that occurs as a result of exposure is the  
28 sum of the toxicities of the individual chemicals to which the  
29 individual is exposed.

30           (3) "Antagonistic effects" means a scientific  
31 principle that the toxicity that occurs as a result of

1 exposure is less than the sum of the toxicities of the  
2 individual chemicals to which the individual is exposed.

3 (4) "Backlog" means reimbursement obligations incurred  
4 pursuant to s. 376.3071(12), prior to March 29, 1995, or  
5 authorized for reimbursement under the provisions of s.  
6 376.3071(12), pursuant to chapter 95-2, Laws of Florida.  
7 Claims within the backlog are subject to adjustment, where  
8 appropriate.

9 (5) "Barrel" means 42 U.S. gallons at 60 degrees  
10 Fahrenheit.

11 (6) "Bulk product facility" means a waterfront  
12 location with at least one aboveground tank with a capacity  
13 greater than 30,000 gallons which is used for the storage of  
14 pollutants.

15 (7) "Cattle-dipping vat" means any structure,  
16 excavation, or other facility constructed by any person, or  
17 the site where such structure, excavation, or other facility  
18 once existed, for the purpose of treating cattle or other  
19 livestock with a chemical solution pursuant to or in  
20 compliance with any local, state, or federal governmental  
21 program for the prevention, suppression, control, or  
22 eradication of any dangerous, contagious, or infectious  
23 diseases.

24 (8) "Compression vessel" means any stationary  
25 container, tank, or onsite integral piping system, or  
26 combination thereof, which has a capacity of greater than 110  
27 gallons, that is primarily used to store pollutants or  
28 hazardous substances above atmospheric pressure or at a  
29 reduced temperature in order to lower the vapor pressure of  
30 the contents. Manifold compression vessels that function as a  
31 single vessel shall be considered as one vessel.

1           (9) "Contaminant" means any physical, chemical,  
2 biological, or radiological substance present in any medium  
3 which may result in adverse effects to human health or the  
4 environment or which creates an adverse nuisance,  
5 organoleptic, or aesthetic condition in groundwater.

6           (10) "Contaminated site" means any contiguous land,  
7 sediment, surface water, or groundwater areas that contain  
8 contaminants that may be harmful to human health or the  
9 environment.

10           (11) "Department" means the Department of  
11 Environmental Protection.

12           (12) "Discharge" includes, but is not limited to, any  
13 spilling, leaking, seeping, pouring, misapplying, emitting,  
14 emptying, releasing, or dumping of any pollutant or hazardous  
15 substance which occurs and which affects lands and the surface  
16 and ground waters of the state not regulated by ss.  
17 376.011-376.21.

18           (13) "Drycleaning facility" means a commercial  
19 establishment that operates or has at some time in the past  
20 operated for the primary purpose of drycleaning clothing and  
21 other fabrics utilizing a process that involves any use of  
22 drycleaning solvents. The term "drycleaning facility" includes  
23 laundry facilities that use drycleaning solvents as part of  
24 their cleaning process. The term does not include a facility  
25 that operates or has at some time in the past operated as a  
26 uniform rental company or a linen supply company regardless of  
27 whether the facility operates as or was previously operated as  
28 a drycleaning facility.

29           (14) "Drycleaning solvents" means any and all  
30 nonaqueous solvents used in the cleaning of clothing and other  
31 fabrics and includes perchloroethylene (also known as

1 tetrachloroethylene) and petroleum-based solvents, and their  
2 breakdown products. For purposes of this definition,  
3 "drycleaning solvents" only includes those drycleaning  
4 solvents originating from use at a drycleaning facility or by  
5 a wholesale supply facility.

6 (15) "Dry drop-off facility" means any commercial  
7 retail store that receives from customers clothing and other  
8 fabrics for drycleaning or laundering at an offsite  
9 drycleaning facility and that does not clean the clothing or  
10 fabrics at the store utilizing drycleaning solvents.

11 (16) "Engineering controls" means modifications to a  
12 site to reduce or eliminate the potential for exposure to  
13 petroleum products' chemicals of concern, drycleaning  
14 solvents, or other contaminants. Such modifications may  
15 include, but are not limited to, physical or hydraulic control  
16 measures, capping, point of use treatments, or slurry walls.

17 (17) "Wholesale supply facility" means a commercial  
18 establishment that supplies drycleaning solvents to  
19 drycleaning facilities.

20 (18) "Facility" means a nonresidential location  
21 containing, or which contained, any underground stationary  
22 tank or tanks which contain hazardous substances or pollutants  
23 and have individual storage capacities greater than 110  
24 gallons, or any aboveground stationary tank or tanks which  
25 contain pollutants which are liquids at standard ambient  
26 temperature and pressure and have individual storage  
27 capacities greater than 550 gallons. This subsection shall not  
28 apply to facilities covered by chapter 377, or containers  
29 storing solid or gaseous pollutants, and agricultural tanks  
30 having storage capacities of less than 550 gallons.

31

1           (19) "Flow-through process tank" means an aboveground  
2 tank that contains hazardous substances or specified mineral  
3 acids as defined in s. 376.321 and that forms an integral part  
4 of a production process through which there is a steady,  
5 variable, recurring, or intermittent flow of materials during  
6 the operation of the process. Flow-through process tanks  
7 include, but are not limited to, seal tanks, vapor recovery  
8 units, surge tanks, blend tanks, feed tanks, check and delay  
9 tanks, batch tanks, oil-water separators, or tanks in which  
10 mechanical, physical, or chemical change of a material is  
11 accomplished.

12           (20) "Hazardous substances" means those substances  
13 defined as hazardous substances in the Comprehensive  
14 Environmental Response, Compensation and Liability Act of  
15 1980, Pub. L. No. 96-510, 94 Stat. 2767, as amended by the  
16 Superfund Amendments and Reauthorization Act of 1986.

17           (21) "Institutional controls" means the restriction on  
18 use or access to a site to eliminate or minimize exposure to  
19 petroleum products' chemicals of concern, drycleaning  
20 solvents, or other contaminants. Such restrictions may  
21 include, but are not limited to, deed restrictions,  
22 restrictive covenants, or conservation easements ~~use~~  
23 ~~restrictions, or restrictive zoning.~~

24           (22) "Laundering on a wash, dry, and fold basis" means  
25 the service provided by the owner or operator of a  
26 coin-operated laundry to its customers whereby an employee of  
27 the laundry washes, dries, and folds laundry for its  
28 customers.

29           (23) "Marine fueling facility" means a commercial or  
30 recreational coastal facility, excluding a bulk product  
31 facility, providing fuel to vessels.

1           (24) "Natural attenuation" means a verifiable an  
2 approach to site rehabilitation that allows natural processes  
3 to contain the spread of contamination and reduce the  
4 concentrations of contaminants in contaminated groundwater and  
5 soil. Natural attenuation processes may include the following:  
6 sorption, biodegradation, chemical reactions with subsurface  
7 materials, diffusion, dispersion, and volatilization.

8           (25) "Operator" means any person operating a facility,  
9 whether by lease, contract, or other form of agreement.

10          (26) "Owner" means any person owning a facility.

11          (27) "Person" means any individual, partner, joint  
12 venture, or corporation; any group of the foregoing, organized  
13 or united for a business purpose; or any governmental entity.

14          (28) "Person in charge" means the person on the scene  
15 who is in direct, responsible charge of a facility from which  
16 pollutants are discharged, when the discharge occurs.

17          (29) "Person responsible for conducting site  
18 rehabilitation" means the site owner, operator, or the person  
19 designated by the site owner or operator on the reimbursement  
20 application. Mortgage holders and trust holders may be  
21 eligible to participate in the reimbursement program pursuant  
22 to s. 376.3071(12).

23          (30) "Petroleum" includes:

24           (a) Oil, including crude petroleum oil and other  
25 hydrocarbons, regardless of gravity, which are produced at the  
26 well in liquid form by ordinary methods and which are not the  
27 result of condensation of gas after it leaves the reservoir;  
28 and

29           (b) All natural gas, including casinghead gas, and all  
30 other hydrocarbons not defined as oil in paragraph (a).

31



1           (31) "Petroleum product" means any liquid fuel  
2 commodity made from petroleum, including, but not limited to,  
3 all forms of fuel known or sold as diesel fuel, kerosene, all  
4 forms of fuel known or sold as gasoline, and fuels containing  
5 a mixture of gasoline and other products, excluding liquefied  
6 petroleum gas and American Society for Testing and Materials  
7 (ASTM) grades no. 5 and no. 6 residual oils, bunker C residual  
8 oils, intermediate fuel oils (IFO) used for marine bunkering  
9 with a viscosity of 30 and higher, asphalt oils, and  
10 petrochemical feedstocks.

11           (32) "Petroleum products' chemicals of concern" means  
12 the constituents of petroleum products, including, but not  
13 limited to, xylene, benzene, toluene, ethylbenzene,  
14 naphthalene, and similar chemicals, and constituents in  
15 petroleum products, including, but not limited to, methyl  
16 tert-butyl ether (MTBE), lead, and similar chemicals found in  
17 additives, provided the chemicals of concern are present as a  
18 result of a discharge of petroleum products.

19           (33) "Petroleum storage system" means a stationary  
20 tank not covered under the provisions of chapter 377, together  
21 with any onsite integral piping or dispensing system  
22 associated therewith, which is used, or intended to be used,  
23 for the storage or supply of any petroleum product. Petroleum  
24 storage systems may also include oil/water separators, and  
25 other pollution control devices installed at petroleum product  
26 terminals as defined in this chapter and bulk product  
27 facilities pursuant to, or required by, permits or best  
28 management practices in an effort to control surface discharge  
29 of pollutants. Nothing herein shall be construed to allow a  
30 continuing discharge in violation of department rules.

31

1           (34) "Pollutants" includes any "product" as defined in  
2 s. 377.19(11), pesticides, ammonia, chlorine, and derivatives  
3 thereof, excluding liquefied petroleum gas.

4           (35) "Pollution" means the presence on the land or in  
5 the waters of the state of pollutants in quantities which are  
6 or may be potentially harmful or injurious to human health or  
7 welfare, animal or plant life, or property or which may  
8 unreasonably interfere with the enjoyment of life or property,  
9 including outdoor recreation.

10           (36) "Real property owner" means the individual or  
11 entity that is vested with ownership, dominion, or legal or  
12 rightful title to the real property, or which has a ground  
13 lease interest in the real property, on which a drycleaning  
14 facility or wholesale supply facility is or has ever been  
15 located.

16           (37) "Response action" means any activity, including  
17 evaluation, planning, design, engineering, construction, and  
18 ancillary services, which is carried out in response to any  
19 discharge, release, or threatened release of a hazardous  
20 substance, pollutant, or other contaminant from a facility or  
21 site identified by the department under the provisions of ss.  
22 376.30-376.319.

23           (38) "Response action contractor" means a person who  
24 is carrying out any response action, including a person  
25 retained or hired by such person to provide services relating  
26 to a response action.

27           (39) "Risk reduction" means the lowering or  
28 elimination of the level of risk posed to human health or the  
29 environment through interim remedial actions, remedial action,  
30 or institutional and, if appropriate, engineering controls.

31

1           ~~(40)~~(39) "Secretary" means the Secretary of  
2 Environmental Protection.  
3           ~~(41)~~(40) "Site rehabilitation" means the assessment of  
4 site contamination and the remediation activities that reduce  
5 the levels of contaminants at a site through accepted  
6 treatment methods to meet the cleanup target levels  
7 established for that site. For purposes of sites subject to  
8 the Resource Conservation and Recovery Act, as amended, the  
9 term includes removal, decontamination, and corrective action  
10 of releases of hazardous substances.  
11           ~~(42)~~(41) "Source removal" means the removal of free  
12 product, or the removal of contaminants from soil or sediment  
13 that has been contaminated to the extent that leaching to  
14 groundwater or surface water has occurred or is occurring.  
15           ~~(43)~~(42) "Storage system" means a stationary tank not  
16 covered under the provisions of chapter 377, together with any  
17 onsite integral piping or dispensing system associated  
18 therewith, which is or has been used for the storage or supply  
19 of any petroleum product, pollutant, or hazardous substance as  
20 defined herein, and which is registered with the Department of  
21 Environmental Protection under this chapter or any rule  
22 adopted pursuant hereto.  
23           ~~(44)~~(43) "Synergistic effects" means a scientific  
24 principle that the toxicity that occurs as a result of  
25 exposure is more than the sum of the toxicities of the  
26 individual chemicals to which the individual is exposed.  
27           ~~(45)~~(44) "Terminal facility" means any structure,  
28 group of structures, motor vehicle, rolling stock, pipeline,  
29 equipment, or related appurtenances which are used or capable  
30 of being used for one or more of the following purposes:  
31 pumping, refining, drilling for, producing, storing, handling,

1 transferring, or processing pollutants, provided such  
2 pollutants are transferred over, under, or across any water,  
3 estuaries, tidal flats, beaches, or waterfront lands,  
4 including, but not limited to, any such facility and related  
5 appurtenances owned or operated by a public utility or a  
6 governmental or quasi-governmental body. In the event of a  
7 ship-to-ship transfer of pollutants, the vessel going to or  
8 coming from the place of transfer and a terminal facility  
9 shall also be considered a terminal facility. For the purposes  
10 of ss. 376.30-376.319, the term "terminal facility" shall not  
11 be construed to include spill response vessels engaged in  
12 response activities related to removal of pollutants, or  
13 temporary storage facilities created to temporarily store  
14 recovered pollutants and matter, or waterfront facilities  
15 owned and operated by governmental entities acting as agents  
16 of public convenience for persons engaged in the drilling for  
17 or pumping, storing, handling, transferring, processing, or  
18 refining of pollutants. However, each person engaged in the  
19 drilling for or pumping, storing, handling, transferring,  
20 processing, or refining of pollutants through a waterfront  
21 facility owned and operated by such a governmental entity  
22 shall be construed as a terminal facility.

23 (46)~~(45)~~ "Transfer" or "transferred" includes  
24 onloading, offloading, fueling, bunkering, lightering, removal  
25 of waste pollutants, or other similar transfers, between  
26 terminal facility and vessel or vessel and vessel.

27 Section 5. Section 376.30701, Florida Statutes, is  
28 created to read:

29 376.30701 Application of risk-based corrective action  
30 principles to contaminated sites; applicability; legislative

31

1 intent; rulemaking authority; contamination cleanup criteria;  
2 limitations; reopeners; mapping; registry.--  
3 (1) APPLICABILITY.--  
4 (a) This section shall not create or establish any new  
5 liability for site rehabilitation at contaminated sites. This  
6 section is intended to describe a risk-based corrective action  
7 process to be applied at sites where legal responsibility for  
8 site rehabilitation exists pursuant to other provisions of  
9 chapter 376 or chapter 403.  
10 (b) This section shall apply to all contaminated sites  
11 resulting from a discharge of pollutants or hazardous  
12 substances where legal responsibility for site rehabilitation  
13 exists pursuant to other provisions of chapter 376 or chapter  
14 403 except for those contaminated sites subject to the  
15 risk-based corrective action cleanup criteria established for  
16 the petroleum, brownfields, and drycleaning programs pursuant  
17 to ss. 376.3071, 376.81, and 376.3078, respectively.  
18 (c) This section shall apply to a variety of site  
19 rehabilitation scenarios, including, but not limited to, site  
20 rehabilitation conducted voluntarily, conducted pursuant to  
21 the department's enforcement authority, or conducted as a  
22 state-managed cleanup by the department.  
23 (d) This section, and any rules adopted pursuant  
24 thereto, shall apply retroactively to all existing  
25 contaminated sites where legal responsibility for site  
26 rehabilitation exists pursuant to other provisions of chapter  
27 376 or chapter 403 except those sites for which as of March 1,  
28 2000, a report has been submitted to the department which  
29 documents that cleanup has been completed, at sites for which  
30 cleanup target levels have been accepted by the department in  
31 an approved technical document, current permit, or other

1 written agreement, and at those sites that have received a no  
2 further action order or a site rehabilitation completion order  
3 from the department. However, the person responsible for site  
4 rehabilitation can elect to have the provisions of this  
5 section, including cleanup target levels established pursuant  
6 thereto, apply in lieu of those in an approved technical  
7 document, current permit, or other written agreement.

8 (e) The cleanup criteria established in subsection (2)  
9 shall apply as Applicable or Relevant and Appropriate  
10 Requirements to all contaminated sites in Florida that have  
11 been identified to qualify for listing, or are listed, on the  
12 National Priority List pursuant to the Comprehensive  
13 Environmental Response, Compensation, and Liability Act of  
14 1980 as amended by the Superfund Amendments and  
15 Reauthorization Act of 1986, and as subsequently amended.

16 (f) This section does not affect the goal of  
17 expediency in emergency response actions to releases to soil  
18 that result in soil contamination at levels above the soil  
19 target cleanup levels. The need for uniformity in requirements  
20 and accountability necessitates that emergency response  
21 actions to releases be subject solely to the requirements of  
22 the department, the Department of Community Affairs, and any  
23 federal agencies with statewide enforcement authority that are  
24 given jurisdiction over releases by federal law. The  
25 risk-based corrective action process at these sites shall  
26 allow department-recognized field screening techniques to be  
27 used.

28 (2) INTENT; RULEMAKING AUTHORITY; CLEANUP  
29 CRITERIA.--It is the intent of the Legislature to protect the  
30 health of all people under actual circumstances of exposure.  
31 By July 1, 2001, the secretary of the department shall

1 establish criteria by rule for the purpose of determining, on  
2 a site-specific basis, the rehabilitation program tasks that  
3 comprise a site rehabilitation program, including a voluntary  
4 site rehabilitation program, and the level at which a  
5 rehabilitation program task and a site rehabilitation program  
6 may be deemed completed. In establishing these rules, the  
7 department shall apply, to the maximum extent feasible, a  
8 risk-based corrective action process to achieve protection of  
9 human health and safety and the environment in a  
10 cost-effective manner based on the principles set forth in  
11 this subsection. These rules shall prescribe a phased  
12 risk-based corrective action process that is iterative and  
13 that tailors site rehabilitation tasks to site-specific  
14 conditions and risk. The department and the person responsible  
15 for site rehabilitation are encouraged to establish decision  
16 points at which risk management decisions will be made. The  
17 department shall provide an early decision, when requested,  
18 regarding applicable exposure factors and a risk management  
19 approach based on the current and future land use at the site.  
20 These rules must also include protocols for the use of natural  
21 attenuation, the use of institutional and engineering  
22 controls, and the issuance of "no further action" letters. The  
23 criteria for determining what constitutes a rehabilitation  
24 program task or completion of a site rehabilitation program  
25 task or site rehabilitation program, including a voluntary  
26 site rehabilitation program, must:

27 (a) Consider the current exposure and potential risk  
28 of exposure to humans and the environment, including multiple  
29 pathways of exposure. The physical, chemical, and biological  
30 characteristics of each contaminant must be considered in  
31

1 order to determine the feasibility of risk-based corrective  
2 action assessment.

3 (b) Establish the point of compliance at the source of  
4 the contamination. However, the department is authorized to  
5 temporarily move the point of compliance to the boundary of  
6 the property, or to the edge of the plume when the plume is  
7 within the property boundary, while cleanup, including cleanup  
8 through natural attenuation processes in conjunction with  
9 appropriate monitoring, is proceeding. The department also is  
10 authorized, pursuant to criteria provided for in this section,  
11 to temporarily extend the point of compliance beyond the  
12 property boundary with appropriate monitoring, if such  
13 extension is needed to facilitate natural attenuation or to  
14 address the current conditions of the plume, provided that  
15 human health, public safety, and the environment are  
16 protected. When temporarily extending the point of compliance  
17 beyond the property boundary, it cannot be extended further  
18 than the lateral extent of the plume, if known, at the time of  
19 execution of a cleanup agreement, if required, or the lateral  
20 extent of the plume as defined at the time of site assessment.  
21 Temporary extension of the point of compliance beyond the  
22 property boundary, as provided in this paragraph, must include  
23 actual notice by the person responsible for site  
24 rehabilitation to local governments and the owners of any  
25 property into which the point of compliance is allowed to  
26 extend and constructive notice to residents and business  
27 tenants of the property into which the point of compliance is  
28 allowed to extend. Persons receiving notice pursuant to this  
29 paragraph shall have the opportunity to comment within 30 days  
30 of receipt of the notice.  
31



1       (c) Ensure that the site-specific cleanup goal is that  
2 all contaminated sites being cleaned up under this section  
3 ultimately achieve the applicable cleanup target levels  
4 provided in this subsection. In the circumstances provided  
5 below, and after constructive notice and opportunity to  
6 comment within 30 days from receipt of the notice to local  
7 government, to owners of any property into which the point of  
8 compliance is allowed to extend, and to residents on any  
9 property into which the point of compliance is allowed to  
10 extend, the department may allow concentrations of  
11 contaminants to temporarily exceed the applicable cleanup  
12 target levels while cleanup, including cleanup through natural  
13 attenuation processes in conjunction with appropriate  
14 monitoring, is proceeding, if human health, public safety, and  
15 the environment are protected.

16       (d) Allow the use of institutional or engineering  
17 controls at contaminated sites being cleaned up under this  
18 section, where appropriate, to eliminate or control the  
19 potential exposure to contaminants of humans or the  
20 environment. The use of controls must be preapproved by the  
21 department and only after constructive notice and opportunity  
22 to comment within 30 days from receipt of notice is provided  
23 to local governments, to owners of any property into which the  
24 point of compliance is allowed to extend, and to residents on  
25 any property into which the point of compliance is allowed to  
26 extend. When institutional or engineering controls are  
27 implemented to control exposure, the removal of the controls  
28 must have prior department approval and must be accompanied by  
29 the resumption of active cleanup, or other approved controls,  
30 unless cleanup target levels under this section have been  
31 achieved.

1       (e) Consider the additive effects of contaminants.  
2 The synergistic and antagonistic effects must also be  
3 considered when the scientific data become available.

4       (f) Take into consideration individual site  
5 characteristics, which shall include, but not be limited to,  
6 the current and projected use of the affected groundwater and  
7 surface water in the vicinity of the site, current and  
8 projected land uses of the area affected by the contamination,  
9 the exposed population, the degree and extent of  
10 contamination, the rate of contaminant migration, the apparent  
11 or potential rate of contaminant degradation through natural  
12 attenuation processes, the location of the plume, and the  
13 potential for further migration in relation to site property  
14 boundaries.

15       (g) Apply state water quality standards as follows:  
16       1. Cleanup target levels for each contaminant found in  
17 groundwater shall be the applicable state water quality  
18 standards. Where such standards do not exist, the cleanup  
19 target levels for groundwater shall be based on the minimum  
20 criteria specified in department rule. The department shall  
21 apply the following, as appropriate, in establishing the  
22 applicable cleanup target levels: calculations using a  
23 lifetime cancer risk level of 1.0E-6; a hazard index of 1 or  
24 less; the best achievable detection limit; and nuisance,  
25 organoleptic, and aesthetic considerations. However, the  
26 department shall not require site rehabilitation to achieve a  
27 cleanup target level for any individual contaminant that is  
28 more stringent than the site-specific, naturally occurring  
29 background concentration for that contaminant.

30       2. Where surface waters are exposed to contaminated  
31 groundwater, the cleanup target levels for the contaminants

1 shall be based on the more protective of the groundwater or  
2 surface water standards as established by department rule. The  
3 point of measuring compliance with the surface water standards  
4 shall be in the groundwater immediately adjacent to the  
5 surface water body.

6 3. The department shall approve alternative cleanup  
7 target levels in conjunction with institutional and  
8 engineering controls, if needed, based upon an applicant's  
9 demonstration, using site-specific data, modeling results,  
10 risk assessment studies, risk-reduction techniques, or a  
11 combination thereof, that human health, public safety, and the  
12 environment are protected to the same degree as provided in  
13 subparagraphs 1. and 2. Where a state water quality standard  
14 is applicable, a deviation may not result in the application  
15 of cleanup target levels more stringent than the standard. In  
16 determining whether it is appropriate to establish alternative  
17 cleanup target levels at a site, the department must consider  
18 the effectiveness of source removal, if any, that has been  
19 completed at the site and the practical likelihood of the use  
20 of low yield or poor quality groundwater, the use of  
21 groundwater near marine surface water bodies, the current and  
22 projected use of the affected groundwater in the vicinity of  
23 the site, or the use of groundwater in the immediate vicinity  
24 of the contaminated area, where it has been demonstrated that  
25 the groundwater contamination is not migrating away from such  
26 localized source, provided human health, public safety, and  
27 the environment are protected.

28 (h) Provide for the department to issue a "no further  
29 action order," with conditions including, but not limited to,  
30 the use of institutional or engineering controls where  
31 appropriate, when alternative cleanup target levels

1 established pursuant to subparagraph (g)3. have been achieved,  
2 or when the person responsible for site rehabilitation can  
3 demonstrate that the cleanup target level is unachievable  
4 within available technologies. Prior to issuing such an  
5 order, the department shall consider the feasibility of an  
6 alternative site rehabilitation technology at the contaminated  
7 site.

8 (i) Establish appropriate cleanup target levels for  
9 soils.

10 1. In establishing soil cleanup target levels for  
11 human exposure to each contaminant found in soils from the  
12 land surface to 2 feet below land surface, the department  
13 shall apply the following, as appropriate: calculations using  
14 a lifetime cancer risk level of 1.0E-6, a hazard index of 1 or  
15 less, and the best achievable detection limit. However, the  
16 department shall not require site rehabilitation to achieve a  
17 cleanup target level for an individual contaminant that is  
18 more stringent than the site-specific, naturally occurring  
19 background concentration for that contaminant. Institutional  
20 controls or other methods shall be used to prevent human  
21 exposure to contaminated soils more than 2 feet below the land  
22 surface. Any removal of such institutional controls shall  
23 require such contaminated soils to be remediated.

24 2. Leachability-based soil target levels shall be  
25 based on protection of the groundwater cleanup target levels  
26 or the alternate cleanup target levels for groundwater  
27 established pursuant to this paragraph, as appropriate. Source  
28 removal and other cost-effective alternatives that are  
29 technologically feasible shall be considered in achieving the  
30 leachability soil target levels established by the department.  
31 The leachability goals shall not be applicable if the

1 department determines, based upon individual site  
2 characteristics and in conjunction with institutional and  
3 engineering controls, if needed, that contaminants will not  
4 leach into the groundwater at levels that pose a threat to  
5 human health, public safety, or the environment.

6 3. The department shall approve alternative cleanup  
7 target levels in conjunction with institutional and  
8 engineering controls, if needed, based upon an applicant's  
9 demonstration, using site-specific data, modeling results,  
10 risk assessment studies, risk-reduction techniques, or a  
11 combination thereof, that human health, public safety, and the  
12 environment are protected to the same degree as provided in  
13 subparagraphs 1. and 2.

14  
15 The department shall require source removal, if warranted and  
16 cost-effective. Once source removal at a site is complete,  
17 the department shall reevaluate the site to determine the  
18 degree of active cleanup needed to continue. Further, the  
19 department shall determine if the reevaluated site qualifies  
20 for monitoring only or if no further action is required to  
21 rehabilitate the site. If additional site rehabilitation is  
22 necessary to reach no further action status, the department is  
23 encouraged to utilize natural attenuation and monitoring where  
24 site conditions warrant.

25 (3) LIMITATIONS.--The cleanup criteria established  
26 pursuant to this section govern only site rehabilitation  
27 activities occurring at the contaminated site. Removal of  
28 contaminated media from a site for offsite relocation or  
29 treatment must be in accordance with all applicable federal,  
30 state, and local laws and regulations.

31

1       (4) REOPENERS.--Upon completion of site rehabilitation  
2 in compliance with subsection (2), additional site  
3 rehabilitation is not required unless it is demonstrated:  
4       (a) That fraud was committed in demonstrating site  
5 conditions or completion of site rehabilitation;  
6       (b) That new information confirms the existence of an  
7 area of previously unknown contamination that exceeds the  
8 site-specific rehabilitation levels established in accordance  
9 with subsection (2), or that otherwise poses the threat of  
10 real and substantial harm to public health, safety, or the  
11 environment;  
12       (c) That the remediation efforts failed to achieve the  
13 site rehabilitation criteria established under this section;  
14       (d) That the level of risk is increased beyond the  
15 acceptable risk established under subsection (2) due to  
16 substantial changes in exposure conditions, such as a change  
17 in land use from nonresidential to residential use. Any person  
18 who changes the land use of the site, thus causing the level  
19 of risk to increase beyond the acceptable risk level, may be  
20 required by the department to undertake additional remediation  
21 measures to assure that human health, public safety, and the  
22 environment are protected consistent with this section; or  
23       (e) That a new discharge of pollutants or hazardous  
24 substances or disposal of solid waste or hazardous waste  
25 occurs at the site subsequent to the issuance of a no further  
26 action letter or site rehabilitation completion order  
27 associated with the original contamination being addressed  
28 pursuant to this section.  
29       (5) MAPPING.--Notwithstanding the exceptions in  
30 paragraph (1)(b), if an institutional control is implemented  
31 at any contaminated site, including sites in the petroleum,

1 brownfields, or drycleaning programs, the property owner must  
2 provide information regarding the institutional control to the  
3 local government for mapping purposes. The local government  
4 must then note the existence of the institutional control on  
5 any relevant local land use and zoning maps with a cross  
6 reference to the department's site registry developed pursuant  
7 to subsection (6). If the type of institutional control used  
8 requires recording with the local government, then the map  
9 notation shall also provide a cross reference to the book and  
10 page number where recorded. When a local government is  
11 provided with evidence that the department has subsequently  
12 issued a no further action order without institutional  
13 controls for a site currently noted on such maps, the local  
14 government shall remove the notation.

15 (6) REGISTRY.--Notwithstanding the exceptions in  
16 paragraph (1)(b), the department shall prepare and maintain a  
17 registry of all contaminated sites subject to institutional  
18 and engineering controls, in order to provide a mechanism for  
19 the public and local governments to monitor the status of  
20 these controls, monitor the department's short-term and  
21 long-term protection of human health and the environment in  
22 relation to these sites, and evaluate economic revitalization  
23 efforts in these areas. At a minimum, the registry shall  
24 include the type of institutional or engineering controls  
25 employed at a particular site, types of contaminants and  
26 affected media, land use limitations, and the county in which  
27 the site is located. Sites listed on the registry at which the  
28 department has subsequently issued a no further action order  
29 without institutional controls shall be removed from the  
30 registry. The department shall make the registry available to  
31 the public and local governments within 1 year after the

1 effective date of this act. The department shall provide local  
2 governments with actual notice when the registry becomes  
3 available. Local zoning and planning offices shall post  
4 information on how to access the registry in public view.

5 Section 6. Section 376.30702, Florida Statutes, is  
6 created to read:

7 376.30702 The State-Owned-Lands Cleanup Program;  
8 findings; intent; purpose; program requirements; limited  
9 liability protection; cost recovery.--

10 (1) FINDINGS; INTENT.--In addition to the legislative  
11 findings set forth in s. 376.30, the Legislature finds and  
12 declares that:

13 (a) Significant quantities of pollutants or hazardous  
14 substances have been discharged in the past on state-owned  
15 lands. Generally, these discharges have occurred as part of  
16 the normal operation of facilities that existed on the  
17 property. Many of these discharges occurred prior to the state  
18 acquiring title to the property, or the discharges resulted  
19 from the acts of tenants or lessees of the state-owned lands.

20 (b) These discharges of pollutants and hazardous  
21 substances on state-owned lands pose a significant threat to  
22 the quality of the groundwaters and inland surface waters of  
23 this state.

24 (c) Where contamination of the groundwater or surface  
25 water has occurred, remedial measures have often been delayed  
26 for long periods while determinations as to liability and the  
27 extent of liability have been made, and such delays have  
28 resulted in the continuation and intensification of the threat  
29 to the public health, safety, and welfare, in greater damage  
30 to the environment, and in significantly higher costs to  
31 contain and remove the contamination.



1       (d) Adequate financial resources must be readily  
2 available to provide for the expeditious supply of safe and  
3 reliable alternative sources of potable water to affected  
4 persons and to provide a means for investigation and  
5 rehabilitation without delay of contaminated sites on  
6 state-owned lands.

7       (e) Site rehabilitation at contaminated sites on  
8 state-owned lands should be based on the actual risk that  
9 contamination may pose to the environment and public health,  
10 taking into account current and future land and water use and  
11 the degree to which contamination may spread and place the  
12 public or the environment at risk.

13       (2) CREATION; PURPOSES OF PROGRAM.--

14       (a) There is created the Florida State-Owned-Lands  
15 Cleanup Program to be administered by the department. To  
16 encourage detection, reporting, and cleanup of contamination  
17 on state-owned lands, the department shall, within the  
18 guidelines established in this section, implement a cleanup  
19 program to provide state-funded and state-managed site  
20 rehabilitation for all state-owned property contaminated by  
21 discharges of pollutants or hazardous substances that are  
22 reported to the department. It is not the intent of this  
23 program to provide funding for environmental compliance for  
24 ongoing operations on state-owned lands.

25       (b) Continuation of this program is subject to an  
26 annual appropriation from the Legislature. Continued state  
27 funding will not be considered an entitlement or a vested  
28 right under this section. The department shall not obligate  
29 funds in excess of the annual appropriation for this program.

30       (c) Whenever, in its determination, incidents of  
31 contamination on state-owned lands caused by pollutants or

1 hazardous substances may pose a threat to the environment or  
2 the public health, safety, or welfare, the department shall  
3 obligate moneys available under this section to provide for:  
4       1. Prompt investigation and assessment of the  
5 contaminated site.  
6       2. Expeditious treatment, restoration, or replacement  
7 of potable water supplies as provided in s. 376.30(3)(c)1.  
8       3. Rehabilitation of contaminated sites, which shall  
9 consist of rehabilitation of affected soil, groundwater,  
10 sediment, and surface waters, using the most cost-effective  
11 alternative that is technologically feasible and reliable and  
12 that provides adequate protection of the public health,  
13 safety, and welfare and minimizes environmental damage, in  
14 accordance with the rehabilitation criteria established by the  
15 department under s. 376.30701, except that nothing in this  
16 subsection may be construed to authorize the department to  
17 obligate funds for payment of costs that may be associated  
18 with, but are not integral to, site rehabilitation.  
19       4. Maintenance and monitoring of contaminated sites.  
20       5. Inspection and supervision of activities described  
21 in this subsection.  
22       6. Payment of expenses incurred by the department in  
23 its efforts to obtain from responsible parties the payment or  
24 recovery of reasonable costs resulting from the activities  
25 described in this subsection.  
26       7. Payment of any other reasonable costs of  
27 administration, including those administrative costs incurred  
28 by the Department of Health in providing field and laboratory  
29 services, toxicological risk assessment, and other assistance  
30 to the department in the investigation of drinking water  
31

1 contamination complaints and costs associated with public  
2 information and education activities.

3 8. Reasonable costs of restoring property as nearly as  
4 practicable to the conditions that existed prior to activities  
5 associated with contamination assessment or remedial action.

6 (3) SITE PRIORITY RANKING AND CLEANUP CRITERIA.--

7 (a) The department shall determine the priority ranking  
8 of all known contaminated sites on state-owned lands using the  
9 criteria listed in s. 376.3078(7) and (8), except for s.  
10 376.3078(7)(e). In applying s. 376.3078(8)(h), the department  
11 shall consider all pollutants and hazardous substances. It is  
12 the intent of the Legislature that site rehabilitation be  
13 conducted first at those sites that pose the greatest threat  
14 to human health and the environment, within the availability  
15 of funds appropriated annually for this program. However,  
16 nothing in this subsection shall be construed to restrict the  
17 department from modifying the priority status of a  
18 rehabilitation site where conditions warrant, taking into  
19 consideration the actual distance between the contamination  
20 site and groundwater or surface water receptors or other  
21 factors that affect the risk of exposure to pollutants and  
22 hazardous substances.

23 (b) The department shall conduct site rehabilitation  
24 at contaminated sites being cleaned up under this program  
25 using the cleanup criteria established in s. 376.30701 and  
26 chapter 62-777, Florida Administrative Code, as that chapter  
27 may hereafter be amended.

28 (c) It is recognized that restoration of groundwater  
29 resources contaminated with pollutants or hazardous substances  
30 may not be achievable using currently available technology. In  
31 situations where the use of available technology is not

1 expected to achieve water quality standards, the department  
2 may use innovative technology that has been field-tested and  
3 that has engineering and cost data available.

4 (d) This subsection may not be construed to restrict  
5 the department from temporarily postponing completion of any  
6 site rehabilitation activities at a contaminated site on  
7 state-owned lands for which funds are being expended under  
8 this section whenever the postponement is deemed necessary in  
9 order to make funds available for rehabilitation of another  
10 contamination site on state-owned lands having a higher  
11 priority status.

12 (e) Regardless of a site's priority ranking, the  
13 department is authorized to temporarily postpone site  
14 rehabilitation at a contaminated site on state-owned lands for  
15 which federal funding may be available pursuant to the  
16 Formerly Used Defense Sites Program. The department, at its  
17 discretion, may proceed with state-funded cleanup of such  
18 sites if the likelihood of timely federal response is low.

19 (4) LIMITED LIABILITY PROTECTION.--

20 (a) The department shall not compel any state agency  
21 that controls or manages state-owned lands that are  
22 contaminated with pollutants or hazardous substances to  
23 conduct site rehabilitation at a contaminated site that has  
24 been reported to the department pursuant to paragraph (2)(a).  
25 Further, notwithstanding subsection (5), the department shall  
26 not pursue cost recovery from any such state agency for site  
27 rehabilitation costs incurred to clean up state-owned lands  
28 that are contaminated with pollutants or hazardous substances.

29 (b) Except as provided in paragraph (a), this section  
30 shall not affect the department's ability or authority to  
31 pursue enforcement against any person who may have liability

1 for site rehabilitation with respect to a contaminated site on  
2 state-owned lands.

3 (c) This section shall not affect the ability or  
4 authority to seek contribution from any person who may have  
5 liability with respect to a contaminated site on state-owned  
6 lands.

7 (d) Nothing in this section shall subject the  
8 department to liability for any action that may be required of  
9 the property owner or the owner or operator of a facility on  
10 state-owned lands by any private party or any local, state, or  
11 Federal Government entity.

12 (5) DEPARTMENTAL DUTY TO SEEK RECOVERY AND  
13 REIMBURSEMENT.--Except as provided in subsection (4) and as  
14 otherwise provided by law, the department may recover from any  
15 person causing or having caused the discharge of pollutants or  
16 hazardous substances on state-owned lands all sums owed or  
17 expended for site rehabilitation at a site designated under  
18 the State-Owned-Lands Cleanup Program. For the purposes of s.  
19 95.11, the limitation period within which to institute an  
20 action to recover such sums shall commence on the last date on  
21 which any such sums were expended and not the date on which  
22 the discharge occurred.

23 Section 7. Paragraphs (e) through (q) of subsection  
24 (3) of section 376.3078, Florida Statutes, are redesignated as  
25 paragraphs (f) through (r), respectively, a new paragraph (e)  
26 is added to said subsection, and paragraph (i) of subsection  
27 (4) of said section is amended, to read:

28 376.3078 Drycleaning facility restoration; funds;  
29 uses; liability; recovery of expenditures.--

30 (3) REHABILITATION LIABILITY.--In accordance with the  
31 eligibility provisions of this section, no real property owner

1 or no person who owns or operates, or who otherwise could be  
2 liable as a result of the operation of, a drycleaning facility  
3 or a wholesale supply facility shall be subject to  
4 administrative or judicial action brought by or on behalf of  
5 any state or local government or agency thereof or by or on  
6 behalf of any person to compel rehabilitation or pay for the  
7 costs of rehabilitation of environmental contamination  
8 resulting from the discharge of drycleaning solvents. Subject  
9 to the delays that may occur as a result of the prioritization  
10 of sites under this section for any qualified site, costs for  
11 activities described in paragraph (2)(b) shall be absorbed at  
12 the expense of the drycleaning facility restoration funds,  
13 without recourse to reimbursement or recovery from the real  
14 property owner or the owner or operator of the drycleaning  
15 facility or the wholesale supply facility.

16 (e) Drycleaning facilities that commenced operating  
17 prior to January 1, 1996, applied to the program by December  
18 30, 1997, and reported in the completed application that the  
19 facility was not in compliance with paragraph (a) shall be  
20 considered to have had secondary containment timely installed  
21 for the purpose of determining eligibility for state-funded  
22 site rehabilitation under this section if such drycleaning  
23 facility entered into a consent order with the department to  
24 install secondary containment and installed the required  
25 containment by April 15, 1999. The department shall reconsider  
26 the applications of facilities that meet the criteria set  
27 forth in this paragraph and that were previously determined to  
28 be ineligible due to failure to comply with secondary  
29 containment requirements. Such facilities must meet all other  
30 eligibility requirements.

31

1           (4) REHABILITATION CRITERIA.--It is the intent of the  
2 Legislature to protect the health of all people under actual  
3 circumstances of exposure. By July 1, 1999, the secretary of  
4 the department shall establish criteria by rule for the  
5 purpose of determining, on a site-specific basis, the  
6 rehabilitation program tasks that comprise a site  
7 rehabilitation program, including a voluntary site  
8 rehabilitation program, and the level at which a  
9 rehabilitation program task and a site rehabilitation program  
10 may be deemed completed. In establishing the rule, the  
11 department shall incorporate, to the maximum extent feasible,  
12 risk-based corrective action principles to achieve protection  
13 of human health and safety and the environment in a  
14 cost-effective manner as provided in this subsection. The  
15 rule shall also include protocols for the use of natural  
16 attenuation and the issuance of "no further action" letters.  
17 The criteria for determining what constitutes a rehabilitation  
18 program task or completion of a site rehabilitation program  
19 task or site rehabilitation program, including a voluntary  
20 site rehabilitation program, must:

21           (i) Establish appropriate cleanup target levels for  
22 soils.

23           1. In establishing soil cleanup target levels for  
24 human exposure to each contaminant found in soils from the  
25 land surface to 2 feet below land surface, the department  
26 shall consider the following, as appropriate: calculations  
27 using a lifetime cancer risk level of 1.0E-6; a hazard index  
28 of 1 or less; the best achievable detection limit; or the  
29 naturally occurring background concentration. Institutional  
30 controls or other methods shall be used to prevent human  
31 exposure to contaminated soils more than 2 feet below the land

1 surface. Any removal of such institutional controls shall  
2 require such contaminated soils to be remediated.

3 2. Leachability-based soil target levels shall be  
4 based on protection of the groundwater cleanup target levels  
5 or the alternate cleanup target levels for groundwater  
6 established pursuant to this paragraph, as appropriate. Source  
7 removal and other cost-effective alternatives that are  
8 technologically feasible shall be considered in achieving the  
9 leachability soil target levels established by the department.  
10 The leachability goals shall not be applicable if the  
11 department determines, based upon individual site  
12 characteristics, that contaminants will not leach into the  
13 groundwater at levels which pose a threat to human health,  
14 public safety, and the environment.

15 3. The department may set alternative cleanup target  
16 levels based upon the person responsible for site  
17 rehabilitation demonstrating, using site-specific modeling and  
18 risk assessment studies, that human health, public safety, and  
19 the environment are protected.

20  
21 The department shall require source removal, if warranted and  
22 cost-effective. Once source removal at a site is complete,  
23 the department shall reevaluate the site to determine the  
24 degree of active cleanup needed to continue. Further, the  
25 department shall determine if the reevaluated site qualifies  
26 for monitoring only or if no further action is required to  
27 rehabilitate the site. If additional site rehabilitation is  
28 necessary to reach "no further action" status, the department  
29 is encouraged to utilize natural attenuation and monitoring  
30 where site conditions warrant.

31



1           Section 8. Section 376.79, Florida Statutes, is  
2 amended to read:

3           376.79 Definitions.--As used in ss. 376.77-376.85, the  
4 term:

5           (1) "Additive effects" means a scientific principle  
6 that the toxicity that occurs as a result of exposure is the  
7 sum of the toxicities of the individual chemicals to which the  
8 individual is exposed.

9           (2) "Antagonistic effects" means a scientific  
10 principle that the toxicity that occurs as a result of  
11 exposure is less than the sum of the toxicities of the  
12 individual chemicals to which the individual is exposed.

13           (3) "Brownfield sites" means sites that are generally  
14 abandoned, idled, or underused industrial and commercial  
15 properties where expansion or redevelopment is complicated by  
16 actual or perceived environmental contamination.

17           (4) "Brownfield area" means a contiguous area of one  
18 or more brownfield sites, some of which may not be  
19 contaminated, and which has been designated by a local  
20 government by resolution. Such areas may include all or  
21 portions of community redevelopment areas, enterprise zones,  
22 empowerment zones, other such designated economically deprived  
23 communities and areas, and Environmental Protection  
24 Agency-designated brownfield pilot projects.

25           (5) "Contaminant" means any physical, chemical,  
26 biological, or radiological substance present in any medium  
27 which may result in adverse effects to human health or the  
28 environment or which creates an adverse nuisance,  
29 organoleptic, or aesthetic condition in groundwater.

30  
31

1           ~~(6)~~(5) "Contaminated site" means any contiguous land,  
2 surface water, or groundwater areas that contain contaminants  
3 that may be harmful to human health or the environment.

4           ~~(7)~~(6) "Department" means the Department of  
5 Environmental Protection.

6           ~~(8)~~(7) "Engineering controls" means modifications to a  
7 site to reduce or eliminate the potential for exposure to  
8 contaminants. Such modifications may include, but are not  
9 limited to, physical or hydraulic control measures, capping,  
10 point of use treatments, or slurry walls.

11           ~~(9)~~(8) "Environmental justice" means the fair  
12 treatment of all people of all races, cultures, and incomes  
13 with respect to the development, implementation, and  
14 enforcement of environmental laws, regulations, and policies.

15           ~~(10)~~(9) "Institutional controls" means the restriction  
16 on use of or access to a site to eliminate or minimize  
17 exposure to contaminants. Such restrictions may include, but  
18 are not limited to, deed restrictions, restrictive covenants,  
19 or conservation easements ~~use restrictions, or restrictive~~  
20 ~~zoning.~~

21           ~~(11)~~(10) "Local pollution control program" means a  
22 local pollution control program that has received delegated  
23 authority from the Department of Environmental Protection  
24 under ss. 376.80(11) and 403.182.

25           ~~(12)~~(11) "Natural attenuation" means a verifiable  
26 approach to site rehabilitation which allows natural processes  
27 to contain the spread of contamination and reduce the  
28 concentrations of contaminants in contaminated groundwater and  
29 soil. Natural attenuation processes may include sorption,  
30 biodegradation, chemical reactions with subsurface materials,  
31 diffusion, dispersion, and volatilization.~~the verifiable~~

1 ~~reduction of contaminants through natural processes, which may~~  
2 ~~include diffusion, dispersion, adsorption, and biodegradation.~~

3 (13)~~(12)~~ "Person responsible for brownfield site  
4 rehabilitation" means the individual or entity that is  
5 designated by the local government to enter into the  
6 brownfield site rehabilitation agreement with the department  
7 or an approved local pollution control program and enters into  
8 an agreement with the local government for redevelopment of  
9 the site.

10 (14)~~(13)~~ "Person" means any individual, partner, joint  
11 venture, or corporation; any group of the foregoing, organized  
12 or united for a business purpose; or any governmental entity.

13 (15) "Risk reduction" means the lowering or  
14 elimination of the level of risk posed to human health or the  
15 environment through interim remedial actions, remedial action,  
16 or institutional, and if appropriate, engineering controls.

17 (16)~~(14)~~ "Secretary" means the secretary of the  
18 Department of Environmental Protection.

19 (17)~~(15)~~ "Site rehabilitation" means the assessment of  
20 site contamination and the remediation activities that reduce  
21 the levels of contaminants at a site through accepted  
22 treatment methods to meet the cleanup target levels  
23 established for that site.

24 (18)~~(16)~~ "Source removal" means the removal of free  
25 product, or the removal of contaminants from soil or sediment  
26 that has been contaminated to the extent that leaching to  
27 groundwater or surface water has occurred or is occurring.

28 (19)~~(17)~~ "Synergistic effects" means a scientific  
29 principle that the toxicity that occurs as a result of  
30 exposure is more than the sum of the toxicities of the  
31 individual chemicals to which the individual is exposed.

1           Section 9. Subsections (4) and (5) and paragraph (c)  
2 of subsection (7) of section 376.80, Florida Statutes, are  
3 amended to read:

4           376.80 Brownfield program administration process.--

5           (4) Local governments or persons responsible for  
6 rehabilitation and redevelopment of brownfield areas must  
7 establish an advisory committee or use an existing advisory  
8 committee that has formally expressed its intent to address  
9 redevelopment of the specific brownfield area for the purpose  
10 of improving public participation and receiving public  
11 comments on rehabilitation and redevelopment of the brownfield  
12 area, future land use, local employment opportunities,  
13 community safety, and environmental justice. Such advisory  
14 committee should include residents within or adjacent to the  
15 brownfield area, businesses operating within the brownfield  
16 area, and others deemed appropriate. The person responsible  
17 for brownfield site rehabilitation must notify the advisory  
18 committee of the intent to rehabilitate and redevelop the site  
19 before executing the brownfield site rehabilitation agreement,  
20 and provide the committee with a copy of the draft plan for  
21 site rehabilitation which addresses elements required by  
22 subsection (5). This includes disclosing potential reuse of  
23 the property as well as site rehabilitation activities, if  
24 any, to be performed. The advisory committee shall review the  
25 proposed redevelopment agreement required pursuant to  
26 paragraph (5)(i) and provide comments, if appropriate, to the  
27 board of the local government with jurisdiction over the  
28 brownfield area. The advisory committee must receive a copy of  
29 the executed brownfield site rehabilitation agreement. When  
30 the person responsible for brownfield site rehabilitation  
31 submits a site assessment report or the technical document

1 containing the proposed course of action following site  
2 assessment to the department or the local pollution control  
3 program for review, the person responsible for brownfield site  
4 rehabilitation must hold a meeting or attend a regularly  
5 scheduled meeting to inform the advisory committee of the  
6 findings and recommendations in the site assessment report or  
7 the technical document containing the proposed course of  
8 action following site assessment. ~~The advisory committee must~~  
9 ~~review and provide recommendations to the board of the local~~  
10 ~~government with jurisdiction on the proposed site~~  
11 ~~rehabilitation agreement provided in subsection (5).~~

12 (5) The person responsible for brownfield site  
13 rehabilitation must enter into a brownfield site  
14 rehabilitation agreement with the department or an approved  
15 local pollution control program if actual contamination exists  
16 at the brownfield site. The brownfield site rehabilitation  
17 agreement must include:

18 (a) A brownfield site rehabilitation schedule,  
19 including milestones for completion of site rehabilitation  
20 tasks and submittal of technical reports and rehabilitation  
21 plans as agreed upon by the parties to the agreement;

22 (b) A commitment to conduct site rehabilitation  
23 activities under the observation of professional engineers or  
24 geologists who are registered in accordance with the  
25 requirements of chapter 471 or chapter 492, respectively.  
26 Submittals provided by the person responsible for brownfield  
27 site rehabilitation must be signed and sealed by a  
28 professional engineer registered under chapter 471, or a  
29 professional geologist registered under chapter 492,  
30 certifying that the submittal and associated work comply with  
31 the law and rules of the department and those governing the

1 profession. In addition, upon completion of the approved  
2 remedial action, the department shall require a professional  
3 engineer registered under chapter 471 or a professional  
4 geologist registered under chapter 492 to certify that the  
5 corrective action was, to the best of his or her knowledge,  
6 completed in substantial conformance with the plans and  
7 specifications approved by the department;

8 (c) A commitment to conduct site rehabilitation in  
9 accordance with an approved comprehensive quality assurance  
10 plan under department rules;

11 (d) A commitment to conduct site rehabilitation  
12 consistent with state, federal, and local laws and consistent  
13 with the brownfield site contamination cleanup criteria in s.  
14 376.81, including any applicable requirements for risk-based  
15 corrective action;

16 (e) Timeframes for the department's review of  
17 technical reports and plans submitted in accordance with the  
18 agreement. The department shall make every effort to adhere  
19 to established agency goals for reasonable timeframes for  
20 review of such documents;

21 (f) A commitment to secure site access for the  
22 department or approved local pollution control program to all  
23 brownfield sites within the eligible brownfield area for  
24 activities associated with site rehabilitation;

25 (g) Other provisions that the person responsible for  
26 brownfield site rehabilitation and the department agree upon,  
27 that are consistent with ss. 376.77-376.85, and that will  
28 improve or enhance the brownfield site rehabilitation process;

29 (h) A commitment to consider appropriate pollution  
30 prevention measures and to implement those that the person  
31 responsible for brownfield site rehabilitation determines are

1 reasonable and cost-effective, taking into account the  
2 ultimate use or uses of the brownfield site. Such measures  
3 may include improved inventory or production controls and  
4 procedures for preventing loss, spills, and leaks of hazardous  
5 waste and materials, and include goals for the reduction of  
6 releases of toxic materials; and  
7 (i) Certification that an agreement exists between the  
8 person responsible for brownfield site rehabilitation and the  
9 local government with jurisdiction over the brownfield area.  
10 Such agreement shall contain terms for the redevelopment of  
11 the brownfield area.  
12 (7) The contractor must certify to the department that  
13 the contractor:  
14 (c) Maintains comprehensive general liability and  
15 comprehensive automobile liability insurance with minimum  
16 limits of at least \$1 million per claim ~~occurrence~~ and \$1  
17 million annual aggregate, sufficient to protect it from claims  
18 for damage for personal injury, including accidental death, as  
19 well as claims for property damage which may arise from  
20 performance of work under the program, designating the state  
21 as an additional insured party.  
22 Section 10. Section 376.81, Florida Statutes, is  
23 amended to read:  
24 376.81 Brownfield site and brownfield areas  
25 contamination cleanup criteria.--  
26 (1) It is the intent of the Legislature to protect the  
27 health of all people under actual circumstances of exposure.  
28 By July 1, 2001 ~~1998~~, the secretary of the department shall  
29 establish criteria by rule for the purpose of determining, on  
30 a site-specific basis, the rehabilitation program tasks that  
31 comprise a site rehabilitation program and the level at which

1 a rehabilitation program task and a site rehabilitation  
2 program may be deemed completed. In establishing the rule,  
3 the department shall apply ~~incorporate~~, to the maximum extent  
4 feasible, a risk-based corrective action process principles to  
5 achieve protection of human health and safety and the  
6 environment in a cost-effective manner based on the principles  
7 set forth as provided in this subsection. The rule must  
8 prescribe a phased risk-based corrective action process that  
9 is iterative and that tailors site rehabilitation tasks to  
10 site-specific conditions and risks. The department and the  
11 person responsible for brownfield site rehabilitation are  
12 encouraged to establish decision points at which risk  
13 management decisions will be made. The department shall  
14 provide an early decision, when requested, regarding  
15 applicable exposure factors and a risk management approach  
16 based on the current and future land use at the site.The rule  
17 shall also include protocols for the use of natural  
18 attenuation, the use of institutional and engineering  
19 controls, and the issuance of "no further action" letters. The  
20 criteria for determining what constitutes a rehabilitation  
21 program task or completion of a site rehabilitation program  
22 task or site rehabilitation program must:

23 (a) Consider the current exposure and potential risk  
24 of exposure to humans and the environment, including multiple  
25 pathways of exposure. The physical, chemical, and biological  
26 characteristics of each contaminant must be considered in  
27 order to determine the feasibility of risk-based corrective  
28 action assessment.

29 (b) Establish the point of compliance at the source of  
30 the contamination. However, the department is authorized to  
31 temporarily move the point of compliance to the boundary of



1 the property, or to the edge of the plume when the plume is  
2 within the property boundary, while cleanup, including cleanup  
3 through natural attenuation processes in conjunction with  
4 appropriate monitoring, is proceeding. The department also is  
5 authorized, pursuant to criteria provided for in this section,  
6 to temporarily extend the point of compliance beyond the  
7 property boundary with appropriate monitoring, if such  
8 extension is needed to facilitate natural attenuation or to  
9 address the current conditions of the plume, provided human  
10 health, public safety, and the environment are protected.  
11 When temporarily extending the point of compliance beyond the  
12 property boundary, it cannot be extended further than the  
13 lateral extent of the plume at the time of execution of the  
14 brownfield site rehabilitation agreement, if known, or the  
15 lateral extent of the plume as defined at the time of site  
16 assessment. Temporary extension of the point of compliance  
17 beyond the property boundary, as provided in this paragraph,  
18 must include actual notice by the person responsible for  
19 brownfield site rehabilitation to local governments and the  
20 owners of any property into which the point of compliance is  
21 allowed to extend and constructive notice to residents and  
22 business tenants of the property into which the point of  
23 compliance is allowed to extend. Persons receiving notice  
24 pursuant to this paragraph shall have the opportunity to  
25 comment within 30 days of receipt of the notice.

26 (c) Ensure that the site-specific cleanup goal is that  
27 all contaminated brownfield sites and brownfield areas  
28 ultimately achieve the applicable cleanup target levels  
29 provided in this section. In the circumstances provided below,  
30 and after constructive notice and opportunity to comment  
31 within 30 days from receipt of the notice to local government,

1 to owners of any property into which the point of compliance  
2 is allowed to extend, and to residents on any property into  
3 which the point of compliance is allowed to extend, the  
4 department may allow concentrations of contaminants to  
5 temporarily exceed the applicable cleanup target levels while  
6 cleanup, including cleanup through natural attenuation  
7 processes in conjunction with appropriate monitoring, is  
8 proceeding, if human health, public safety, and the  
9 environment are protected.

10 (d) Allow brownfield site and brownfield area  
11 rehabilitation programs to include the use of institutional or  
12 engineering controls, where appropriate, to eliminate or  
13 control the potential exposure to contaminants of humans or  
14 the environment. The use of controls must be preapproved by  
15 the department and only after constructive notice and  
16 opportunity to comment within 30 days from receipt of notice  
17 is provided to local governments, to owners of any property  
18 into which the point of compliance is allowed to extend, and  
19 to residents on any property into which the point of  
20 compliance is allowed to extend. When institutional or  
21 engineering controls are implemented to control exposure, the  
22 removal of the controls must have prior department approval  
23 and must be accompanied by the resumption of active cleanup,  
24 or other approved controls, unless cleanup target levels under  
25 this section have been achieved.

26 (e) Consider the additive effects of contaminants.  
27 The synergistic and antagonistic effects shall also be  
28 considered when the scientific data become available.

29 (f) Take into consideration individual site  
30 characteristics, which shall include, but not be limited to,  
31 the current and projected use of the affected groundwater and

1 surface water in the vicinity of the site, current and  
2 projected land uses of the area affected by the contamination,  
3 the exposed population, the degree and extent of  
4 contamination, the rate of contaminant migration, the apparent  
5 or potential rate of contaminant degradation through natural  
6 attenuation processes, the location of the plume, and the  
7 potential for further migration in relation to site property  
8 boundaries.

9 (g) Apply state water quality standards as follows:

10 1. Cleanup target levels for each contaminant found in  
11 groundwater shall be the applicable state water quality  
12 standards. Where such standards do not exist, the cleanup  
13 target levels for groundwater shall be based on the minimum  
14 criteria specified in department rule. The department shall  
15 apply ~~consider~~ the following, as appropriate, in establishing  
16 the applicable cleanup target levels ~~minimum criteria~~:  
17 calculations using a lifetime cancer risk level of 1.0E-6; a  
18 hazard index of 1 or less; the best achievable detection  
19 limit; and ~~the naturally occurring background concentration~~  
20 ~~or~~ nuisance, organoleptic, and aesthetic considerations.  
21 However, the department shall not require site rehabilitation  
22 to achieve a cleanup target level for any individual  
23 contaminant which is more stringent than the site-specific,  
24 naturally occurring background concentration for that  
25 contaminant.

26 2. Where surface waters are exposed to contaminated  
27 groundwater, the cleanup target levels for the contaminants  
28 shall be based on the more protective of the groundwater or  
29 surface water standards as established by department rule.  
30 The point of measuring compliance with the surface water  
31

1 standards shall be in the groundwater immediately adjacent to  
2 the surface water body.

3 3. The department shall approve ~~may set~~ alternative  
4 cleanup target levels in conjunction with institutional and  
5 engineering controls, if needed, based upon an applicant's  
6 demonstration, using site-specific data, modeling results, and  
7 risk assessment studies, risk reduction techniques, or a  
8 combination thereof, that human health, public safety, and the  
9 environment are protected to the same degree as provided in  
10 subparagraphs 1. and 2. Where a state water quality standard  
11 is applicable, a deviation may not result in the application  
12 of cleanup target levels more stringent than the standard. In  
13 determining whether it is appropriate to establish alternative  
14 cleanup target levels at a site, the department must consider  
15 the effectiveness of source removal, if any, which ~~that~~ has  
16 been completed at the site and the practical likelihood of the  
17 use of low yield or poor quality groundwater, the use of  
18 groundwater near marine surface water bodies, the current and  
19 projected use of the affected groundwater in the vicinity of  
20 the site, or the use of groundwater in the immediate vicinity  
21 of the contaminated area, where it has been demonstrated that  
22 the groundwater contamination is not migrating away from such  
23 localized source, provided human health, public safety, and  
24 the environment are protected. When using alternative cleanup  
25 target levels at a brownfield site, institutional controls  
26 shall not be required if:

27 a. The only cleanup target levels exceeded are the  
28 groundwater cleanup target levels derived from nuisance,  
29 organoleptic, or aesthetic considerations;  
30  
31

- 1           b. Concentrations of all contaminants meet the state  
2 water quality standards or minimum criteria, based on  
3 protection of human health, provided in subparagraph 1.;  
4           c. All of the groundwater cleanup target levels  
5 established pursuant to subparagraph 1. are met at the  
6 property boundary;  
7           d. The person responsible for brownfield site  
8 rehabilitation has demonstrated that the contaminants will not  
9 migrate beyond the property boundary at concentrations  
10 exceeding the groundwater cleanup target levels established  
11 pursuant to subparagraph 1.;  
12           e. The property has access to and is using an offsite  
13 water supply and no unplugged private wells are used for  
14 domestic purposes; and  
15           f. The real property owner provides written acceptance  
16 of the "no further action" proposal to the department or the  
17 local pollution control program.  
18           (h) Provide for the department to issue a "no further  
19 action order," with conditions, including, but not limited to,  
20 the use of institutional or engineering controls where  
21 appropriate, when alternative cleanup target levels  
22 established pursuant to subparagraph (g)3. have been achieved,  
23 or when the person responsible for brownfield site  
24 rehabilitation can demonstrate that the cleanup target level  
25 is unachievable within available technologies. Prior to  
26 issuing such an order, the department shall consider the  
27 feasibility of an alternative site rehabilitation technology  
28 in the brownfield area.  
29           (i) Establish appropriate cleanup target levels for  
30 soils.  
31

1           1. In establishing soil cleanup target levels for  
2 human exposure to each contaminant found in soils from the  
3 land surface to 2 feet below land surface, the department  
4 shall apply ~~consider~~ the following, as appropriate:  
5 calculations using a lifetime cancer risk level of 1.0E-6; a  
6 hazard index of 1 or less; and the best achievable detection  
7 limit; ~~or the naturally occurring background concentration.~~  
8 However, the department shall not require site rehabilitation  
9 to achieve a cleanup target level for an individual  
10 contaminant which is more stringent than the site-specific,  
11 naturally occurring background concentration for that  
12 contaminant. Institutional controls or other methods shall be  
13 used to prevent human exposure to contaminated soils more than  
14 2 feet below the land surface. Any removal of such  
15 institutional controls shall require such contaminated soils  
16 to be remediated.

17           2. Leachability-based soil target levels shall be  
18 based on protection of the groundwater cleanup target levels  
19 or the alternate cleanup target levels for groundwater  
20 established pursuant to this paragraph, as appropriate. Source  
21 removal and other cost-effective alternatives that are  
22 technologically feasible shall be considered in achieving the  
23 leachability soil target levels established by the department.  
24 The leachability goals shall not be applicable if the  
25 department determines, based upon individual site  
26 characteristics, and in conjunction with institutional and  
27 engineering controls, if needed, that contaminants will not  
28 leach into the groundwater at levels that ~~which~~ pose a threat  
29 to human health, public safety, and the environment.

30           3. The department shall approve ~~may set~~ alternative  
31 cleanup target levels in conjunction with institutional and

1 engineering controls, if needed,based upon an applicant's  
2 demonstration, using site-specific data,modeling results,~~and~~  
3 risk assessment studies, risk reduction techniques, or a  
4 combination thereof,that human health, public safety, and the  
5 environment are protected to the same degree as provided in  
6 subparagraphs 1. and 2.

7 (2) The department shall require source removal, if  
8 warranted and cost-effective. Once source removal at a site  
9 is complete, the department shall reevaluate the site to  
10 determine the degree of active cleanup needed to continue.  
11 Further, the department shall determine if the reevaluated  
12 site qualifies for monitoring only or if no further action is  
13 required to rehabilitate the site. If additional site  
14 rehabilitation is necessary to reach "no further action"  
15 status, the department is encouraged to utilize natural  
16 attenuation and monitoring where site conditions warrant.

17 (3) The cleanup criteria established pursuant to this  
18 section govern only site rehabilitation activities occurring  
19 at the contaminated site. Removal of contaminated media from a  
20 site for offsite relocation or treatment must be in accordance  
21 with all applicable federal, state, and local laws and  
22 regulations.

23 Section 11. Paragraph (k) is added to subsection (2)  
24 of section 376.82, Florida Statutes, to read:

25 376.82 Eligibility criteria and liability  
26 protection.--

27 (2) LIABILITY PROTECTION.--

28 (k) A person whose property becomes contaminated due  
29 to geophysical or hydrologic reasons, including the migration  
30 of contaminants onto their property from the operation of  
31 facilities and activities on a nearby designated brownfield

1 area, and whose property has never been occupied by a business  
2 that utilized or stored the contaminants or similar  
3 constituents is not subject to administrative or judicial  
4 action brought by or on behalf of another to compel the  
5 rehabilitation of or the payment of the costs for the  
6 rehabilitation of sites contaminated by materials that  
7 migrated onto the property from the designated brownfield  
8 area, if the person:

9 1. Does not own and has never held an ownership  
10 interest in, or shared in the profits of, activities in the  
11 designated brownfield area operated at the source location;

12 2. Did not participate in the operation or management  
13 of the activities in the designated brownfield area operated  
14 at the source location; and

15 3. Did not cause, contribute to, or exacerbate the  
16 release or threat of release of any hazardous substance  
17 through any act or omission.

18 Section 12. Section 376.876, Florida Statutes, is  
19 created to read:

20 376.876 Brownfield Redevelopment Grants Program.--

21 (1) The Department of Environmental Protection shall  
22 administer a program to make grants to local governments that  
23 have designated brownfield areas under s. 376.80 and need  
24 financial assistance for site assessment and cleanup  
25 activities to make the redevelopment project financially  
26 feasible. The grants may not be used for general  
27 administrative costs incurred by a local government for  
28 oversight and administration of a brownfield area  
29 redevelopment program, but instead the state grants must be  
30 used for actual site assessment and cleanup activities,  
31 including integrally related engineering design, soil removal,



1 and soil treatment, and customary nonadministrative activities  
2 undertaken in the remediation of contamination at a designated  
3 brownfield site. The department shall take into consideration  
4 the following factors when reviewing each applicant's grant  
5 proposal:

6 (a) The level of unemployment and poverty in the  
7 census tract in the brownfield area and in which the project  
8 site is located;

9 (b) The likelihood that the proposed response action  
10 will be adequate to clean up the property in accordance with  
11 the requirements of all applicable laws;

12 (c) The presence of community benefits associated with  
13 the project, including, without limitation, the creation or  
14 revitalization of open space;

15 (d) The proximity of the project site to existing  
16 transportation and utility infrastructure appropriate to  
17 support the proposed reuse of the project site;

18 (e) Whether the project site is located in an area  
19 that has received pilot project funding for redevelopment of  
20 brownfield areas from the U.S. Environmental Protection  
21 Agency;

22 (f) Whether the local government in which the project  
23 site is located has made available substantial funds in  
24 furtherance of remediation and redevelopment of the designated  
25 brownfield area; and

26 (g) Whether the local government having the designated  
27 brownfield area has completed any projects in the brownfield  
28 area.

29 (2) While grants must be applied for by municipalities  
30 or counties, the local governments may by agreement allow the  
31 grant funds to be used by local redevelopment authorities,

1 economic development authorities, community redevelopment  
2 agencies, or other similar entities approved by the municipal  
3 or county governing body that has designated the brownfield  
4 area under s. 376.80 and has jurisdiction over the location  
5 where the redevelopment grant funds will be used.

6 (3) Each grant requires a 20-percent match from the  
7 applicant in either cash or in-kind services. A single grant  
8 may not be larger than \$300,000 during each state fiscal year.  
9 Of each grant, no more than \$100,000 may be used for site  
10 assessment activities. The remainder of the grant amount is to  
11 be used for cleanup activities at a brownfield site. In the  
12 first fiscal year in which the Legislature provides an  
13 appropriation for this grant program, the department shall  
14 administer the funds to assure that at least one-half of the  
15 amount available is awarded to local governments that can  
16 demonstrate compliance with paragraphs (1)(e), (f), and (g).

17 (4) The department may adopt rules to administer the  
18 grant program authorized by this section relating to  
19 application forms, timeframes for submission of applications,  
20 notification of grant awards, and grant agreement documents  
21 required.

22 Section 13. Section 376.88, Florida Statutes, is  
23 created to read:

24 376.88 Brownfield Program Review Advisory Council.--

25 (1) The Brownfield Program Review Advisory Council is  
26 created to provide for continuous review of the progress in  
27 the administration of Florida's Brownfield Program and to make  
28 recommendations for its improvement. The council shall consist  
29 of the following:

30  
31

- 1           (a) A representative of a city that participated in  
2 the pilot grant program for brownfields sponsored by the U.S.  
3 Environmental Protection Agency;  
4           (b) A representative of a county that participated in  
5 the pilot grant program for brownfields sponsored by the U.S.  
6 Environmental Protection Agency;  
7           (c) A representative of a statewide business  
8 organization;  
9           (d) A representative of Enterprise Florida, Inc.;  
10           (e) A representative of response action contractor  
11 companies involved in activities at brownfield sites;  
12           (f) The Secretary of the Department of Environmental  
13 Protection or his or her designee;  
14           (g) The Secretary of the Department of Community  
15 Affairs or his or her designee;  
16           (h) The Director of the Office of Tourism, Trade, and  
17 Economic Development in the Executive Office of the Governor;  
18           (i) A representative of a financial institution;  
19           (j) A representative of the Sierra Club; and  
20           (k) A representative of the Community Environmental  
21 Health Advisory Board.  
22           (2) Duties and responsibilities.--The Brownfield  
23 Program Review Advisory Council shall:  
24           (a) Perform a comprehensive review of activities  
25 related to rehabilitation of brownfield areas;  
26           (b) Determine and recommend any additional economic  
27 incentives that should be available to help accelerate  
28 rehabilitation activities; and  
29           (c) Review the administrative processes for approving  
30 and permitting rehabilitation activities by the Department of  
31

1 Environmental Protection and local programs and make  
2 recommendations for improvements in these processes.

3 (3) The initial term for service of the council shall  
4 be 2 years from the date of the first meeting and may be  
5 extended at the discretion of the Secretary of Environmental  
6 Protection, or his or her designee, based upon the needs of  
7 the brownfields program.

8 (4) Each member shall provide his or her own per diem  
9 and expenses for travel while carrying out the business of the  
10 council.

11 (5) The Secretary of the Department of Environmental  
12 Protection or his or her designee shall appoint the council  
13 members, serve as chairperson of the council, and convene the  
14 council on at least a semi-annual basis.

15 (6) The council shall submit a report to the  
16 Legislature as often as needed to address issues requiring  
17 legislative changes or appropriations.

18 Section 14. Paragraph (d) is added to subsection (3)  
19 of section 403.973, Florida Statutes, to read:

20 403.973 Expedited permitting; comprehensive plan  
21 amendments.--

22 (3)

23 (d) Projects located in a designated brownfield area  
24 are eligible for the expedited permitting process.

25 Section 15. Subsection (1) of section 190.012, Florida  
26 Statutes, is amended to read:

27 190.012 Special powers; public improvements and  
28 community facilities.--The district shall have, and the board  
29 may exercise, subject to the regulatory jurisdiction and  
30 permitting authority of all applicable governmental bodies,  
31 agencies, and special districts having authority with respect

1 to any area included therein, any or all of the following  
2 special powers relating to public improvements and community  
3 facilities authorized by this act:

4 (1) To finance, fund, plan, establish, acquire,  
5 construct or reconstruct, enlarge or extend, equip, operate,  
6 and maintain systems, facilities, and basic infrastructures  
7 for the following:

8 (a) Water management and control for the lands within  
9 the district and to connect some or any of such facilities  
10 with roads and bridges.

11 (b) Water supply, sewer, and wastewater management,  
12 reclamation, and reuse or any combination thereof, and to  
13 construct and operate connecting intercepting or outlet sewers  
14 and sewer mains and pipes and water mains, conduits, or  
15 pipelines in, along, and under any street, alley, highway, or  
16 other public place or ways, and to dispose of any effluent,  
17 residue, or other byproducts of such system or sewer system.

18 (c) Bridges or culverts that may be needed across any  
19 drain, ditch, canal, floodway, holding basin, excavation,  
20 public highway, tract, grade, fill, or cut and roadways over  
21 levees and embankments, and to construct any and all of such  
22 works and improvements across, through, or over any public  
23 right-of-way, highway, grade, fill, or cut.

24 (d)1. District roads equal to or exceeding the  
25 specifications of the county in which such district roads are  
26 located, and street lights.

27 2. Buses, trolleys, transit shelters, ridesharing  
28 facilities and services, parking improvements, and related  
29 signage.

30 (e) Investigation and remediation costs associated  
31 with the cleanup of actual or perceived environmental

1 contamination within the district under the supervision or  
2 direction of a competent governmental authority unless the  
3 covered costs benefit any person who is a landowner within the  
4 district and who caused or contributed to the contamination.

5 (f)~~(e)~~ Conservation areas, mitigation areas, and  
6 wildlife habitat, including the maintenance of any plant or  
7 animal species, and any related interest in real or personal  
8 property.

9 (g)~~(f)~~ Any other project within or without the  
10 boundaries of a district when a local government issued a  
11 development order pursuant to s. 380.06 or s. 380.061  
12 approving or expressly requiring the construction or funding  
13 of the project by the district, or when the project is the  
14 subject of an agreement between the district and a  
15 governmental entity and is consistent with the local  
16 government comprehensive plan of the local government within  
17 which the project is to be located.

18 Section 16. Section 712.01, Florida Statutes, is  
19 amended to read:

20 712.01 Definitions.--As used in this law:

21 (1) The term "person" as used herein denotes singular  
22 or plural, natural or corporate, private or governmental,  
23 including the state and any political subdivision or agency  
24 thereof as the context for the use thereof requires or denotes  
25 and including any homeowners' association.

26 (2) "Root of title" means any title transaction  
27 purporting to create or transfer the estate claimed by any  
28 person and which is the last title transaction to have been  
29 recorded at least 30 years prior to the time when  
30 marketability is being determined. The effective date of the  
31 root of title is the date on which it was recorded.

1           (3) "Title transaction" means any recorded instrument  
2 or court proceeding which affects title to any estate or  
3 interest in land and which describes the land sufficiently to  
4 identify its location and boundaries.

5           (4) The term "homeowners' association" means a  
6 homeowners' association as defined in s. 617.301(7), or an  
7 association of parcel owners which is authorized to enforce  
8 use restrictions that are imposed on the parcels.

9           (5) The term "parcel" means real property which is  
10 used for residential purposes that is subject to exclusive  
11 ownership and which is subject to any covenant or restriction  
12 of a homeowners' association.

13           (6) The term "covenant or restriction" means any  
14 agreement or limitation contained in a document recorded in  
15 the public records of the county in which a parcel is located  
16 which subjects the parcel to any use restriction which may be  
17 enforced by a homeowners' association or which authorizes a  
18 homeowners' association to impose a charge or assessment  
19 against the parcel or the owner of the parcel or which may be  
20 enforced by the Florida Department of Environmental Protection  
21 pursuant to chapter 376 or chapter 403.

22           Section 17. Section 712.03, Florida Statutes, is  
23 amended to read:

24           712.03 Exceptions to marketability.--Such marketable  
25 record title shall not affect or extinguish the following  
26 rights:

27           (1) Estates or interests, easements and use  
28 restrictions disclosed by and defects inherent in the  
29 muniments of title on which said estate is based beginning  
30 with the root of title; provided, however, that a general  
31 reference in any of such muniments to easements, use

1 restrictions or other interests created prior to the root of  
2 title shall not be sufficient to preserve them unless specific  
3 identification by reference to book and page of record or by  
4 name of recorded plat be made therein to a recorded title  
5 transaction which imposed, transferred or continued such  
6 easement, use restrictions or other interests; subject,  
7 however, to the provisions of subsection (5).

8 (2) Estates, interests, claims, or charges, or any  
9 covenant or restriction, preserved by the filing of a proper  
10 notice in accordance with the provisions hereof.

11 (3) Rights of any person in possession of the lands,  
12 so long as such person is in such possession.

13 (4) Estates, interests, claims, or charges arising out  
14 of a title transaction which has been recorded subsequent to  
15 the effective date of the root of title.

16 (5) Recorded or unrecorded easements or rights,  
17 interest or servitude in the nature of easements,  
18 rights-of-way and terminal facilities, including those of a  
19 public utility or of a governmental agency, so long as the  
20 same are used and the use of any part thereof shall except  
21 from the operation hereof the right to the entire use thereof.  
22 No notice need be filed in order to preserve the lien of any  
23 mortgage or deed of trust or any supplement thereto  
24 encumbering any such recorded or unrecorded easements, or  
25 rights, interest, or servitude in the nature of easements,  
26 rights-of-way, and terminal facilities. However, nothing  
27 herein shall be construed as preserving to the mortgagee or  
28 grantee of any such mortgage or deed of trust or any  
29 supplement thereto any greater rights than the rights of the  
30 mortgagor or grantor.

31



1           (6) Rights of any person in whose name the land is  
2 assessed on the county tax rolls for such period of time as  
3 the land is so assessed and which rights are preserved for a  
4 period of 3 years after the land is last assessed in such  
5 person's name.

6           (7) State title to lands beneath navigable waters  
7 acquired by virtue of sovereignty.

8           (8) A restriction or covenant recorded pursuant to  
9 chapter 376 or chapter 403.

10           Section 18. The sum of \$5 million is appropriated from  
11 the General Revenue Fund to the Department of Environmental  
12 Protection for the purpose of administering the Brownfield  
13 Redevelopment Grants Program under section 376.876, Florida  
14 Statutes, as created by this act, during the 2000-2001 fiscal  
15 year.

16           Section 19. The sum of \$2.5 million is appropriated  
17 from the General Revenue Fund to the Department of  
18 Environmental Protection for the purpose of administering the  
19 State-Owned-Lands Cleanup Program under section 376.30702,  
20 Florida Statutes, as created by this act, during the 2000-2001  
21 fiscal year.

22           Section 20. This act shall take effect upon becoming a  
23 law.

24  
25  
26  
27  
28  
29  
30  
31

\*\*\*\*\*

HOUSE SUMMARY

Similar to CS/CS/SB 1408. Provides regulatory and funding tools for economic development in brownfield areas.

Clarifies that in order for businesses that are not qualified target industry businesses to participate in the brownfield redevelopment bonus refund program they must pay wages that are at least 80 percent of the area wages, in addition to making the required capital investments.

Clarifies that the new statute governing application of risk-based corrective action principles to contaminated sites shall not create or establish any new liability for site rehabilitation, but is intended to describe a risk-based corrective action process to be applied at sites where legal responsibility for site rehabilitation exists pursuant to other provisions of chs. 376 or 403, F.S.

Specifies that the local advisory committee shall review the required proposed brownfield redevelopment agreement.

Specifies that the initial term for service of the Brownfield Program Review Advisory Council shall be 2 years from the date of the first meeting and may be extended at the discretion of the Secretary of the Department of Environmental Protection or his or her designee, based upon the needs of the brownfields program.

Creates the Florida State-Owned Lands Cleanup Program to encourage detection, reporting, and cleanup of contamination of state-owned lands. Directs the Department of Environmental Protection to use existing criteria in determining site priority ranking of contaminated sites for purposes of the program. Establishes limited liability protection with respect to the program. Provides a \$2.5 million appropriation to the department for the purpose of administering the program.

Provides for a Brownfield Redevelopment Grants Program within the Department of Environmental Protection. Specifies uses of grant funds and requires matching funds. Provides a \$5 million appropriation to the department for the purpose of administering the program.